

## **Transfer or “Kent” criteria – 1966**

From a policy memorandum included in the appendix to Kent v United States, 383, U.S. 541, 565-568 (1966).

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court. It will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction and transfer the case to the U.S. District Court for the District of Columbia for trial under the adult procedures of that Court.

## **NeMoyer's Updated Criteria - 2018**

Based on the evolution of neuro and social science over the past 50 years, reflected in upper-court rulings, Dr. Amanda NeMoyer, J.D., Ph.D. provided an updated list of transfer criteria (See *Kent Revisited: Aligning judicial waiver criteria with more than fifty years of social science research*, in *Vermont Law Review*, 2018. South Carolina is one of only seven states that has made no updates to their transfer criteria over the past 50 years. In Dr. NeMoyer's review of all states' transfer criteria, she observed that SC statute does not list the Kent factors, and suspected that judges simply may be defaulting to the original, perhaps at the direction of a circuit administrative judge.

### **2018 - Proposed updated factors**

1. Whether the juvenile—like most youth—lacks sophistication and maturity, especially in the areas of future planning, impulse control, and vulnerability to negative influence and outside pressures.
2. The juvenile's potential for reform (i.e., whether the child could benefit from treatment or rehabilitative programs available to the juvenile court). Assessment of this factor may include motivation for treatment, empathy, and acceptance of responsibility generally; however, requiring a defendant to admit responsibility for the alleged offense to demonstrate amenability to treatment would violate the child's Fifth Amendment right against self-incrimination.
3. The nature of, response to, and effect of prior treatment efforts, whether in or out of the juvenile justice system. The fact that the youth was exposed to some form of "prior treatment" may not be enough—judges should specifically consider the methods attempted and ensure that the youth did not receive treatment in name only.
4. Individual limitations that could affect the child's abilities as a defendant (i.e., lack of competence; misunderstanding of legal rights and procedures; and increased suggestibility), the presence of which should weigh against transfer to criminal court. Similarly, judges should consider whether past traumas (i.e., a history of neglect or abuse), mental health concerns, substance dependence issues, and/or intellectual disabilities exist for the child and could be better treated in the juvenile system.
5. Whether assessments identifying both risk factors for future offending and protective factors that reduce the likelihood of future offending suggest that community protection requires waiver. Such assessments should also consider available resources that might provide additional support to the youth and thereby facilitate rehabilitation within the juvenile system.
6. The seriousness of the alleged offense and whether it was against persons or against property. Assessment of this factor might also include consideration of the youth's alleged level of planning and/or participation in the offense.